

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.3580 of the)	MB Docket No. 17-264
Commission's Rules Regarding Public)	
Notice of the Filing of Applications)	
)	
Modernization of Media Regulation)	MB Docket No. 17-105
Initiative)	
)	
Revision of the Public Notice)	MB Docket No. 05-6
Requirements of Section 73.3580)	

**COMMENTS OF
OFFICE OF COMMUNICATION OF THE UNITED CHURCH OF CHRIST,
INC., BENTON INSTITUTE, COMMON CAUSE, FREE PRESS, OPEN
TECHNOLOGY INSTITUTE AT NEW AMERICA**

The Office of Communication of the United Church of Christ, Inc., the Benton Institute,¹ Common Cause, Free Press, and the Open Technology Institute at New America, by their attorneys, the Institute for Public Representation, respectfully submit these comments in response to the Federal Communications Commission's ("Commission") Further Notice of Proposed Rulemaking, Amendment of Section 73.3580 of the Commission's Rules Regarding Public Notice of the Filing of

¹ The Benton Institute for Broadband & Society is a non-profit organization dedicated to ensuring that all people in the U.S. have access to competitive, high-performance broadband regardless of where they live or who they are. It believes communication policy - rooted in the values of access, equity, and diversity - has the power to deliver new opportunities and strengthen communities. These comments reflect the institutional view of the Benton Institute for Broadband & Society, and, unless obvious from the text, is not intended to reflect the views of its individual officers, directors, or advisors.

Applications, MB Dockets No. 17-264, No. 17-105, and No. 05-6 (rel. Sept. 26, 2019) (“FNPRM”).²

We encourage the Commission to modify the public notice requirements to ensure public notice is effective and meaningful. To ensure the content of public notices is meaningful, on-air and online notices should include jargon-free information about the purpose of an application, whether an application seeks a waiver of the Commission’s rules, and the public’s role in the broadcast application process. The timing of on-air announcements should depend on the applicant’s broadcast medium. Applicants also should be required to make more on-air announcements than in the Commission’s current proposal. We support the Commission’s proposal to maintain on-air notice and do not object to replacing newspaper notice with online notice.

I. The Proposed Scripts for Online and On-Air Notices Should Be Modified to Provide Meaningful Notice.

The Commission can streamline the current public notice requirements while simultaneously revising them to provide meaningful notice. First, the Commission should add three types of information to the online and on-air notice scripts. Second, the Commission should add additional instructions to the notice script to help members of the public locate an application and related information about filing comments and petitions.

A. The Notice Scripts Should Contain Information About an Application’s Purpose, Waivers, and the Public’s Role in the Application Process.

The Commission proposes to standardize online and on-air notices and seeks comment on proposed specific language that authorized stations could use.³ We agree

² Revision of the Public Notice Requirements of Section 73.3580, *Proposed Rules*, 84 Fed. Reg. 55,881 (Oct. 18, 2019) [hereinafter FNPRM]. The citations in these comments are to the Commission’s document, not the Federal Register.

³ FNPRM at ¶¶ 20 (proposed text for online notices), 29 (proposed scripts for on-air notices).

that promulgation of standardized notices will promote more efficient notice; however, the Commission’s proposed scripts would not provide the public with meaningful notice. Numerous public interest groups have long encouraged the Commission to revise the public notice requirements to provide meaningful notice to the public. In an effort to streamline the public notice requirements, however, the Commission has omitted essential information from the notice scripts.⁴

First, the Commission seeks comment on whether notices should include “a statement of the purpose of the application together with pertinent details.”⁵ Yes, both online and on-air notice scripts should contain a one-to-two sentence, jargon-free description of the purpose of the application, in addition to the technical name of the application. Most members of the public are not familiar with the technical terms that the Commission and the broadcast industry use for licenses.⁶ Additionally, broadcast applications can be lengthy and difficult to parse, especially for people with limited experience reading such applications. A brief, layman’s summary of the application would make notice more meaningful.⁷ This will ensure members of the public fully understand why they are seeing the notice and what the application accomplishes after a

⁴ The Appendix contains our proposed scripts for on-air and online notices, which are a modified form of the Commission’s proposed notices. The Appendix also includes our proposed scripts for public notices for hearings, which are based on the modifications we propose here.

⁵ See FNPRM at ¶¶ 20 (seeking comment on including statement of purpose to “facilitate viewer/listener comments or objections”). This question is not specifically posed regarding on-air notices, but the Commission does seek comment on “any additional information that commenters believe should be required.” *Id.* at ¶ 29.

⁶ See Comments of Office of Communication of the United Church of Christ, Inc., et al., Dkt. 17-264, at 9 (filed Dec. 29, 2017) (“2017 Comments”).

⁷ As an example of what this would look like in practice, WyoMedia Corporation recently filed an application for assignment of the license of television station KFNE (among others). Under the modified script, the applicant would state: “This application would lead to the sale of KFNE by WyoMedia Corporation to Front Range Television LLC.” This describes the actual effects of the application on the station and the parties involved in easy-to-understand terms. Application for Consent to Assignment of Broadcast Station License of WyoMedia Corp. (filed Oct. 15, 2019), <https://publicfiles.fcc.gov/api/service/tv/application/1809826.html>.

few seconds of reading. Moreover, much like an introduction at the beginning of a brief, this summary will help readers navigate the full application. The description is particularly important for on-air notices, because listeners/viewers will not have the application immediately available to view via hyperlink.

Second, the Commission asks whether notices should include “specific language regarding whether the applicant is seeking a waiver of Commission rules and the nature of the waiver sought.”⁸ Yes, this should also be included in both online and on-air notices. As we noted in our comments to the Commission’s 2017 Notice of Proposed Rulemaking, an application that seeks a waiver of the Commission’s rules “is presumptively not in the public interest.”⁹ Including specific language indicating an applicant seeks a waiver is a modest burden to the applicant. By contrast, without a waiver, an application would violate the Commission’s ownership rules.¹⁰ It is particularly important to prominently provide the public with notice of these waivers and solicit their comments.

Third, the Commission also seeks comment on any additional suggested amendments to the proposed notices.¹¹ We urge the Commission to include in both online and on-air notices statements informing the public that broadcast stations must operate in the public interest and members of the public have the right to comment on and file petitions to deny a broadcast application. The purpose of public notice is to allow the public to contact the Commission with information relevant to a broadcaster’s application. However, members of the public may not be aware of their right to be involved in the license renewal, transfer, and assignment process. Highlighting broadcasters’ duty and the ways the public can participate makes notice more

⁸ FNPRM at ¶¶ 20, 29.

⁹ 2017 Comments at 9.

¹⁰ See Comments of Office of Communication of the United Church of Christ, Inc., et al., Dkt. 05-6, at 8-9 (filed Aug. 1, 2005).

¹¹ FNPRM at ¶¶ 20, 29.

meaningful and increases the likelihood that the public will be involved in the application process.

The Commission should not favor shorter scripts at the expense of providing the public with meaningful public notice. The modified script proposed here contains information essential to aiding members of the public in understanding an application and getting involved in the application process.¹² The Commission should not omit this information solely to create a short on-air announcement, especially when broadcasters need only air these announcements a handful of times over the course of four weeks.

B. Additional Instructions in On-Air and Online Notices Would Better Direct the Public to Information About Applications and Filing Comments and Petitions.

It is important that interested members of the public be able to easily find details regarding notices along with instructions on how to provide comment. We thus urge the Commission to adopt two small changes to the way online and on-air notices direct the public to information about applications to improve access. First, to help viewers/listeners find an application, on-air notices should direct the public to the website posting the applicant's online notice.¹³ Members of the public may find it difficult to navigate the Commission's public inspection file and licensing databases. By contrast, it is easier to direct viewers/listeners to the notice on an applicant or applicant-affiliated website, which will be displayed on the home page.¹⁴ The notice then directly links to the application, removing the need to run searches.

¹² Based on our tests, the proposed script would typically take 40–50 seconds to air.

¹³ This information is not currently included in the Commission's proposed script for on-air announcements. *See* FNPRM at ¶ 29. *See* Appendix for the sample text that we propose. This would apply only to applicants that must provide both online and on-air notice.

¹⁴ This likely would be more complicated for applicants that must post online notices on third-party websites, because their notices may not be posted on the home page, but it is still not burdensome.

Second, online notices should contain a hyperlink to a page on the Commission's website with instructions on filing comments or petitions.¹⁵ Members of the public cannot easily find this information by visiting the Commission's website or by viewing the application. By creating a dedicated page that all online notices would link to, the Commission would facilitate public participation in the broadcast application process.

II. The Technical Requirements for Online Notice Should Be Adopted, but the On-Air Notice Number and Timing Requirements Should Be Modified.

We support the Commission's proposals for the timing, duration, frequency, and display of online notices on applicant or applicant-affiliated websites.¹⁶ We agree that online notices should be "conspicuously posted on that website's home page" in easily readable text.¹⁷ We encourage the Commission to clarify that a notice is not "conspicuously posted" if the notice is at the bottom of a website's home page. We also believe the thirty days of continuous posting will contribute to meaningful public notice. Members of the public may not visit applicant websites with the same frequency as they once read newspapers. Thirty days provides the public with more time to locate the notice on an applicant or applicant-affiliated website and promotes more meaningful public notice.

The Commission seeks comment on a proposed 7AM to 11PM time window for airing of on-air notices.¹⁸ This window will not ensure that members of the public see or hear the on-air notice. Rather, the Commission should adopt medium-based time windows for airing notices. On-air notices should be broadcast between 7AM and 6PM

¹⁵ This information is not currently included in the Commission's proposed notice text. See FNPRM at ¶ 20.

¹⁶ FNPRM at ¶¶ 18-19, 21.

¹⁷ *Id.* at ¶ 18.

¹⁸ FNPRM at ¶ 28.

for radio and 7PM and 10PM for television.¹⁹ Television and radio usage patterns vary throughout the day. Broadcasters should not be permitted to air notices when few people will be watching.²⁰ Our proposed time windows are designed to reach the maximum number of users. Peak radio listenership occurs between 7AM and 6PM.²¹ Similarly, peak television viewership occurs between 7PM and 10PM.²² These time windows maximize the number of people who will receive an on-air notice while streamlining the public notice requirements.

Broadcasters that must provide on-air notice should provide at least six, instead of four, on-air announcements in the post-filing period.²³ Broadcasters should air at least one notice per week for four consecutive weeks. By airing more announcements, broadcasters would increase the number of people who hear or see the on-air notice. Currently, applicants for license renewal must air at least six post-filing announcements.²⁴ Although other applicants are only required to air at least four announcements, six announcements represent a modest increase that is designed to raise public awareness.²⁵ Public notice is not effective if it does not reach its intended audience.

¹⁹ These time windows are close to the 7AM to 7PM and 6PM to 11PM time windows the Commission seeks comment on, as an alternative to the 7AM to 11PM window. *See* FNPRM at ¶ 28.

²⁰ Under the Commission's proposal, a radio station could air its notice at 10PM. On average, only ten percent of radio listeners use the radio at that time. NIELSEN CO., AUDIO TODAY 2019: HOW AMERICA LISTENS, at 7 (June 2019), <https://www.nielsen.com/wp-content/uploads/sites/3/2019/06/audio-today-2019.pdf>.

²¹ Approximately forty percent of a given weekday's radio listenership tune in between 7AM and 6PM. *Id.*

²² Approximately fifty percent of a given weekday's television viewership tune in between 7PM and 10PM. Rachel Krantz-Kent, *Television, Capturing America's Attention at Prime Time and Beyond*, 7 BEYOND THE NUMBERS 14 (2018), <https://www.bls.gov/opub/btn/volume-7/pdf/television-capturing-americas-attention.pdf>.

²³ We propose no changes to the types of applicants that are subject to the on-air notice requirements.

²⁴ *See* 47 CFR §73.3580(d)(4)(ii).

²⁵ *See id.* at §73.3580(d)(3)(i).

III. Conclusion

We urge the Commission to reform the public notice requirements to make notice meaningful and effective. Public notice for broadcast applications should contain sufficient information for the public to understand an application's purpose and the public's ability to file comments and petitions. Notice also should be aired at times and in a number that will maximize the number of people who will see or hear an on-air notice.

Respectfully Submitted,

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APPENDIX

Proposed Script for On-Air Announcements

A. For Broadcasters with OPIF

On [DATE], [APPLICANT NAME], licensee of [CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. This application would [ONE TO TWO SENTENCE DESCRIPTION OF EFFECT OF APPLICATION IN LAYMAN'S TERMS]. [If filing for waiver: APPLICANT NAME seeks a waiver of the Commission's rules for NATURE OF WAIVER. The application would violate the Commission's ownership rules if granted without this waiver.] Broadcasters must operate their stations in the public interest. You have the right to comment on or file a petition to deny this application. For more information, visit [if applicant must also file online notice: the notice on WEBSITE WHERE APPLICANT PUBLISHED ONLINE NOTICE, or] publicfiles.fcc.gov and search in [CALL SIGN]'s public file.

B. For Broadcasters without OPIF

On [DATE], [APPLICANT NAME], licensee of [CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. This application would [ONE TO TWO SENTENCE DESCRIPTION OF EFFECT OF APPLICATION IN LAYMAN'S TERMS]. [If filing for waiver: APPLICANT NAME seeks a waiver of the Commission's rules for NATURE OF WAIVER. The application would violate the Commission's ownership rules if granted without this waiver.] Broadcasters must operate their stations in the public interest. You have the right to comment on or file a petition to deny this application. For more information, visit [if applicant must also file online notice: the notice on WEBSITE WHERE APPLICANT PUBLISHED ONLINE NOTICE, or] fcc.gov/searchlms and search in list of [CALL SIGN]'s filed applications.

Proposed Script for Online Announcements

A. For Authorized Stations

On [DATE], [APPLICANT NAME], [PERMITEE/LICENSEE] of [CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE] filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. The application would [ONE TO TWO SENTENCE DESCRIPTION OF EFFECT OF APPLICATION IN LAYMAN'S TERMS]. [If filing for waiver: APPLICANT NAME seeks a waiver of the Commission's rules for NATURE OF WAIVER. The application would violate the Commission's ownership rules if granted without this waiver.] Broadcasters must operate their stations in the public interest. You have the right to comment on or file a petition to deny this application. To view the application, visit [HYPERLINK TO APPLICATION IN OPIF or APPLICATION LOCATION IN MEDIA BUREAU'S LICENSING AND MANAGEMENT SYSTEM]. For more information on filing comments and petitions, visit [HYPERLINK TO PUBLIC NOTICE WITH PLEADING SCHEDULE].

B. For Proposed but Not Authorized Stations

On [DATE], [APPLICANT NAME], applicant for [A NEW (STATION TYPE) STATION ON] [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. This application would [ONE TO TWO SENTENCE DESCRIPTION OF EFFECT OF APPLICATION IN LAYMAN’S TERMS]. [If filing for waiver: APPLICANT NAME seeks a waiver of the Commission’s rules for NATURE OF WAIVER. The application would violate the Commission’s ownership rules if granted without this waiver.] Broadcasters must operate their stations in the public interest. You have the right to comment on or file a petition to deny this application. To view the application, visit [HYPERLINK TO LOCATION IN THE MEDIA BUREAU’S LICENSING AND MANAGEMENT SYSTEM]. For more information on filing comments and petitions, visit [HYPERLINK TO PUBLIC NOTICE WITH PLEADING SCHEDULE].

Proposed Script for Hearing Announcements

A. On-Air Announcements

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. On [DATE], the Commission designated the application for an evidentiary hearing on the following issues: [LIST OF ISSUES IN THE HEARING AS LISTED IN THE FCC’S ORDER OR SUMMARY OF DESIGNATION FOR HEARING, DESCRIBED IN LAYMAN’S TERMS]. For more information, visit [URL OF INTERNET WEBSITE MAINTAINED BY THE STATION, THE LICENSEE/PERMITTEE, OR THE LICENSEE/PERMITTEE’S PARENT ENTITY, OR OTHER PUBLICLY ACCESSIBLE WEBSITE], and click the link in the “Hearing Designation Order” notice.

B. Online Announcement

On [DATE], [APPLICANT NAME], licensee of [STATION CALL SIGN], [STATION FREQUENCY], [STATION COMMUNITY OF LICENSE], filed an application with the Federal Communications Commission for [TYPE OF APPLICATION]. On [DATE], the Commission designated the application for an evidentiary hearing on the following issues: [LIST OF ISSUES IN THE HEARING AS LISTED IN THE FCC’S ORDER OR SUMMARY OF DESIGNATION FOR HEARING, DESCRIBED IN LAYMAN’S TERM]. Members of the public wishing to view the Hearing Designation Order or to file comments can visit [INSERT HYPERLINK TO THE HEARING DESIGNATION ORDER, ORDER TO SHOW CAUSE, OR OTHER ORDER DESIGNATING THE APPLICATION FOR HEARING, ON THE FCC’S INTERNET WEBSITE].